

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Aroner Analyst: Darrine Distefano Bill Number: AB 2963
Related Bills: See Legislative History Telephone: 845-6458 Amended Date: 04-02-2002
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Child and Dependent Care Refundable Credit/Treatment of Never Married Parents

SUMMARY

This bill would apply the same rules for the Child and Dependent Care Refundable Credit (CDC) to all classes of parents.

SUMMARY OF AMENDMENTS

The April 2, 2002, amendments eliminated all language regarding the Water Code and added the new language discussed in this analysis.

This is the department's first analysis of the bill.

PURPOSE OF THE BILL

The purpose of this bill is to simplify administration of the CDC for the department and to eliminate intrusive audits.

EFFECTIVE/OPERATIVE DATE

This bill is a tax levy and would be effective immediately upon enactment. It specifies that it would apply to taxable years beginning on or after January 1, 2002.

POSITION

Support.

At it's meeting on March 6, 2002, the Franchise Tax Board voted to sponsor the language as amended April 2, 2002.

Board Position:

<u> X </u> S	<u> </u> NA	<u> </u> NP
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<u> </u> N	<u> </u> OUA	<u> </u> PENDING

Department Director

Date

Gerald H. Goldberg

5/2/02

ANALYSIS

FEDERAL/STATE LAW

Existing federal law allows a non-refundable tax credit known as the Child and Dependent Care Expenses Credit (federal CDC). In order to take this credit, a taxpayer must have a qualifying individual who is any child under the age of 13 that the taxpayer can claim as a dependent.¹ However, this rule does not apply for children of divorced or separated parents.

In the case of a divorced or legally separated parent, if the custodial parent cannot claim the child as a dependent, the child will be the qualifying individual for the credit only if all of the following are true:

- (1) the custodial parent had the child for more than half the days in the year,
- (2) one parent provided over half the support to the child or both parents provided over half the support to the child (with the balance being provided by a third person, such as a grandparent),
- (3) the child was in the custody of one or both parents for more than half of the calendar year,
- (4) the child was under age 13 or was disabled, and
- (5) either: (a) the custodial parent signs a federal form stating he or she will not claim the exemption or (b) the non-custodial parent paid a specific amount of support and can claim the exemption under a pre-1985 decree of divorce or separate maintenance.

These rules do not apply to never-married parents. A never-married parent will qualify for the federal CDC only if he or she also claims the child as a dependent. Never-married parents must establish which parent provided over half of the child's financial support for the year. Whereas for divorced parents, the law merely requires proof of which parent had the child for more than half of the days in a year.

Existing state law allows a credit similar to the federal CDC. The California CDC is based on a percentage of the taxpayer's federal CDC. Unlike the federal CDC, the California credit is refundable.

The federal CDC rules regarding qualifying individuals as well as the federal provisions for divorced or legally separated parents and never-married parents apply for California purposes.

THIS BILL

This bill would allow eligibility for the California CDC for all parents who are not married to be the same as divorced or separated parents for purposes of the California CDC.

IMPLEMENTATION CONSIDERATIONS

This bill would ease administration of the California CDC for taxpayers as well as for the department.

LEGISLATIVE HISTORY

AB 480 (Ducheny, Ch.114, Stats. 2000) enacted the California CDC discussed in this analysis.

¹ A qualified person also may include a disabled spouse or person.

OTHER STATES' INFORMATION

Review of *Massachusetts*, *Minnesota*, and *New York* laws showed comparable tax credits or deductions for certain household and dependent care services that are necessary for gainful employment. Since these states use the federal CDC to establish their own credit or deduction, the federal rules regarding never-married parents should apply. Thus, these states are not treating all classes of parents the same.

These states were reviewed because of the similarities between California income tax laws and their tax laws.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

The net revenue impact associated with this bill in any given year is unknown but projected to be insignificant. It is projected that in many instances never-married custodial parents also are providing over half the child's support and, therefore, are already entitled to this credit under current law. Also, it is anticipated that many taxpayers claiming this credit will continue to follow the federal provisions for divorced or legally separated parents and never-married parents for California purposes. This will result in an audit issue for California purposes to determine if the taxpayer meets the proper qualifications for claiming the credit.

ARGUMENTS/POLICY CONCERNS

Applying the divorced or separated parents test to never-married parents will eliminate the need for the intrusive dependent support test in an audit of never married parents. The audit will be quicker and less intrusive to the taxpayer. Determining the amount of time the child spends with either parent is easier to establish than the amount of financial support actually provided by each parent. .

Although this bill will simplify the qualifications for never married parents under the CDC, it would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

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